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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,958	07/03/2001	Jack V. Smith	1414.47	9735
21901	7590	12/23/2008	EXAMINER	
SMITH HOPEN, PA 180 PINE AVENUE NORTH OLDSMAR, FL 34677			PAGAN, JENINE MARIE	
ART UNIT	PAPER NUMBER			
	3728			
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12/23/2008	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/898,958	<b>Applicant(s)</b> SMITH, JACK V.
	<b>Examiner</b> JENINE M. PAGAN	<b>Art Unit</b> 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) 1-5 and 8-10 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 6,7 and 11-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/CC)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/2007 has been entered.
2. Newly submitted claims 8-10 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 8-10 are relating to the methods of packaging an article, which were previously elected without traverse with the response filed on 11/04/2002. Accordingly, claims 8-10 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

##### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 6 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Geiser (US 3,514,157).

**Claim 1:** Geiser discloses a cushion package (see figure above):

- a box 1 having a hollow interior defined by a top wall 5, a bottom wall 5, and sidewalls 5/6 interconnecting said top 5 and bottom walls 5;
- a first inflatable bladder 2 disposed within said hollow interior of said box (Col 4:31-32);
- an opening 10 formed in said box 1 (Col 4:26-28);
- a normally closed valve 3 disposed in sealing engagement with said opening 10 (Col 4:30-32);
- said normally closed valve 3 having an inlet port external to said box 1 (Col 4:26-28);
- said inlet port adapted to be connected to a source of gaseous fluid under pressure (Col 4:30-37)
- said outlet port being in fluid communication with said first inflatable bladder 2 so that said first inflatable bladder 2 is inflated when said source of gaseous fluid under pressure is connected to said inlet port (Col 4:30-43);
- whereby said first inflatable bladder 2 when inflated serves as a cushioning means for said item 4 during shipping

**Claim 11:** Geiser discloses a cushion package (see figure above):

- first inflatable bladder 2 being disposed in protecting relation to said bottom wall 5 of said box

**Claim 12:** Geiser discloses a cushion package (see figure above):

- first inflatable bladder 2 being disposed in protecting relation to said sidewalls  
5 of said box

**Claim 13:** Geiser discloses a cushion package:

- said box 1 is made of a rigid material (Col 4:24-25)

**Claim 14:** Geiser discloses a cushion package (see Figure 3):

- said box is made of a semi-rigid material (along side 6 and 8)

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiser (US 3,514,157) in view of Sposito, Jr. (3,521,743).

Claim 7: Geiser discloses the claimed invention as stated above in claim 6 except Geiser does not specifically disclose:

- a second inflatable bladder disposed in said hollow interior of said box in cooperative relation to said first inflatable bladder to provide an enhanced, cushioning means
- wherein the box has four side walls and closable flaps on the top horizontal and bottom horizontal sections
- However Sposito discloses:

- a second inflatable bladder 17 disposed in said hollow interior of said box in cooperative relation to said first inflatable bladder 16 to provide an enhanced, cushioning means (Col 3:1-10)
- wherein the box has four side walls 21 and closable flaps 12/13 on the top horizontal and bottom horizontal sections (Col 2:61-65 and Fig 1)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a second inflatable bladder in the container of Geiser as taught by Sposito, since Sposito states at column 3:1-10 that such a modification would secure the article in the container without it being damaged during shipping.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a second inflatable bladder in the container of Geiser, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bernis Co.*, 193 USPQ 8.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENINE M. PAGAN whose telephone number is (571)270-3216. The examiner can normally be reached on Monday - Thursday, 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/  
Primary Examiner, Art Unit 3728

Jenine M Pagan  
Examiner  
Art Unit 3728